

LETTER OPINION
96-L-150

August 30, 1996

Honorable Elroy N. Lindaas
State Senator
Route 2, Box 91
Mayville, ND 58257-9673

Dear Senator Lindaas:

Thank you for your August 26, 1996, letter concerning N.D.C.C. ch. 16.1-08.1, which deals with the regulation of campaign contributions, and its applicability to entities such as the Democratic Governors' Association (the "DGA"). Enclosed with your letter was some background material concerning correspondence between the Secretary of State and the DGA. The crux of your inquiry centers on the appropriate characterization of groups such as the DGA under the provisions of N.D.C.C. ch. 16.1-08.1.

N.D.C.C. § 16.1-08.1-03.3 prohibits corporations, cooperatives, limited liability companies, or associations from making direct contributions, inter alia, to any candidate for political office. The question here is whether a group such as the DGA is an association within the meaning of N.D.C.C. ch. 16.1-08.1 and therefore prohibited from making direct political contributions to a candidate for political office except through a separate and segregated fund or whether it is a political committee which is not so constrained.

N.D.C.C. § 16.1-08.1-01 defines association as meaning:

any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees, or political parties.

N.D.C.C. § 16.1-08.1-01(1). As indicated in the statute, an association would not include an entity that meets the definition of a political committee.

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A political committee is defined as "any committee, club, association, or other group of persons which receives contributions or makes expenditures primarily for political purposes." N.D.C.C. § 16.1-08.1-01(8). From the information provided earlier to the Secretary of State, it was unclear whether the DGA would more properly be determined to be an association or a political committee under the statute.

In an April 1, 1996, letter to the Secretary of State from the DGA's Washington attorneys, they represented that the entity "is a nonprofit association organized under § 527 of the Internal Revenue Code for the purpose of promoting Democratic policies and programs and supporting the election of Democratic Governors and other non-federal political candidates." The Articles of Organization submitted to the Secretary of State's office for this entity lists five purposes. See part II of the DGA Articles of Organization attached hereto. The Articles of Organization do not indicate the priority of the purposes or which is the primary purpose of the DGA. Therefore, it was unclear, based on the information provided to the Secretary of State, whether this entity would be more properly characterized solely as an association or as a political committee under N.D.C.C. § 16.1-08.1-01.

As noted above, the definition of political committee in N.D.C.C. § 16.1-08.1-01 refers to groups of persons receiving contributions or making expenditures primarily for political purposes. Political purpose is further defined in N.D.C.C. § 16.1-08.1-01(10) as "any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office whether the activity is undertaken by a candidate, a political committee, a political party, or any person."

Whether an entity meets the definition of a political committee, in my opinion, can be based on the primary purpose for which the group exists. If the primary purpose of a group is to receive contributions or make expenditures in support of or in opposition to the election or nomination of a candidate to public office, it reasonably can be determined to be a political committee. However, if the primary purpose or purposes of a group such as this is other than making expenditures to aid in the election of a candidate to public office, it would be more properly characterized as an association, which would be subject to the prohibition against making direct contributions to aid any candidate for political office.

In addition to reviewing the material initially submitted to the Secretary of State regarding the DGA, I have looked at the summary

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analysis of the purpose of the DGA as described by it in its World Wide Web Site:

The Democratic Governors' Association was created in 1983 to support the candidacy of Democratic Governors throughout the nation. The DGA provides direct contributions, political and strategic assistance to the campaigns The DGA staff consults on a regular basis with campaign managers, pollsters and media consultants to monitor developments in campaigns. The DGA also provides Governors and candidates with research on issues as Governors develop new programs and candidates formulate position papers.

DGA web site at <http://www.democrats.org/party/dnc/headq/dga/>.

This description of the DGA in its web site strongly supports the conclusion that the primary purpose of the DGA is to undertake and finance activities in support of or in opposition to the election or nomination of candidates to public office. Therefore, it is my opinion that if the DGA's representations in its web site accurately represent its primary purpose, it is a political committee under N.D.C.C. § 16.1-08.1-01 and would not be barred by N.D.C.C. § 16.1-08.1-03.3 from making direct contributions to candidates for public office in this state. N.D.C.C. § 16.1-08.1-03.2 contains registration requirements for political committees which may apply.

Because the primary problem that created the confusion in this case concerned the proper characterization of the DGA as an association or a political committee under N.D.C.C. ch. 16.1-08.1 based on the information originally submitted on behalf of DGA, rather than any inherent ambiguity or problem with the statute, I do not believe that a legislative amendment is imperative.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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Enclosure